IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1994 OF 2006

Citibank N.A. ...Petitioner

vs.

State of Maharashtra & Anr. ...Respondents

Ms Rekha Tawade i/b M/s.M.V.Kini & Co.for the Petitioner
Mr.A.S.Shitole, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 19,2006.

P.C.:

1. Heard learned Counsel appearing for the Petitioner. A vehicle owned and possessed by the second Respondent has been seized by the police in connection with some offence. An application was made by the present Petitioner before the learned Metropolitan Magistrate for grant of custody of the vehicle. The Application was made on the ground that there was a deed of hypothecation executed by the second Respondent in respect of the said vehicle in favour of the Petitioner. The claim was based on the various documents executed by the second Respondent in favour of the Petitioner. By impugned order, the said application has been rejected by the learned Metropolitan Magistrate.

2. The learned Counsel for the Petitioner submitted that on the basis of documents which are executed by the second Respondent, the Petitioner had right to possess the said vehicle as the second Respondent has committed default in repayment of the loan granted by the Petitioner. She,

therefore, submitted that the custody ought to have been handed over to the Petitioner subject to compliance with reasonable conditions.

3. I have considered the submissions. It is not in dispute that the second Respondent is the registered owner of the vehicle. It is also not in dispute that on the date on which the vehicle was seized, the second Respondent was in possession of the said vehicle.

4. In the circumstances, the learned Magistrate was right in rejecting the application filed by the Petitioner for custody of the vehicle. The learned Magistrate could not have made adjudication as regards rights of the Petitioner on the basis of the alleged contract with the second Respondent. It is for the Petitioner to approach the appropriate forum to establish the right to recover the possession of the said vehicle. In absence of adjudication by the appropriate forum, the learned Magistrate was justified in rejecting the application filed by the Petitioner. There is no merit in the Petition and the same is rejected.

JUDGE